

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 3, 2000 appellant, then a 36-year-old window clerk, filed a traumatic injury claim (Form CA-1), alleging that he injured his right shoulder and lower back when he slipped on an icy parking lot at work that same date. He stopped work on the date of injury. OWCP accepted the claim for displacement of a lumbar intervertebral disc without myelopathy and a right shoulder and right upper arm sprain in an unspecified site, and thereafter paid compensation benefits. It subsequently authorized back surgery performed on February 2, 2001 by Dr. Hampton J. Jackson, Jr., an attending Board-certified orthopedic surgeon.

On June 25, 2001 OWCP referred appellant for vocational rehabilitation as a functional capacity evaluation (FCE) indicated that he could work full time with a lifting restriction.

In medical reports dated February 8, 2002 to September 12, 2003, Dr. Jackson noted that appellant was having significant continuing symptoms following his back surgery and listed his physical restrictions. He opined that appellant was totally disabled and not fit for any work or rehabilitation, or light and sedentary duties. On September 12, 2003 Dr. Jackson advised that appellant would be unable to perform the sedentary positions he was considering because they could involve lifting. He requested that appellant provide a full job description of his work activities for his review to determine whether he was fit to perform them on a repeated basis.

In November 2003 a vocational rehabilitation counselor determined that appellant could work as a cashier, Department of Labor, *Dictionary of Occupational Titles* (DOT) No. 211.362-010, and that the position was available within his commuting area.

On March 9, 2005 OWCP proposed to reduce appellant's compensation as he had the capacity to earn wages as a cashier, DOT No. 211.362-010, at the rate of \$288.00 per week. In an August 19, 2005 decision, it reduced appellant's compensation effective July 10, 2004 based on his capacity to earn wages as a cashier.<sup>2</sup>

On September 14, 2005 appellant requested an oral hearing before an OWCP hearing representative. In a November 14, 2005 decision, the hearing representative reversed the August 19, 2005 decision, finding that the medical evidence of record failed to establish that the constructed cashier position was medically suitable for appellant. Appellant's compensation was restored retroactively.

In a March 18, 2014 report, Dr. Daniel R. Ignacio, an attending Board-certified psychiatrist, noted that appellant continued to suffer from his February 3, 2003 work-related medical conditions. He reviewed the history of his medical treatment and listed findings on examination. Dr. Ignacio provided an impression of status post lumbar laminectomy with residual pain, chronic progressive lumbar disc syndrome with lumbar radiculopathy, chronic lumbar arachnoiditis versus lumbar spinal stenosis, chronic thoracolumbar strain, and chronic right shoulder strain. He concluded that appellant was unable to return to work.

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<sup>2</sup> OWCP initially issued its decision on July 1, 2005 to an incorrect address. Thus, it reissued the decision with appeal rights to the correct address on August 19, 2005.

By letter dated May 2, 2014, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Haskins for a second opinion to determine his disability status.

In a May 20, 2014 report, Dr. Haskins noted the history of the February 3, 2000 work injuries and appellant's medical treatment and reviewed the statement of accepted facts. He described appellant's current complaints which included constant lower back and right buttock pain, proximal radiation into his neck, and paresthesias involving the plantar surface medial aspect of the left arch. On examination, Dr. Haskins reported that both shoulders had full range of motion, symmetry, and no pain. Winging of the scapula was noted. Speed and Spurling signs were negative. Biceps were intact. Range of motion of the elbows, wrists, and hands were full. The back had a well-healed midline surgical scar. There was full range of motion of the lumbar spine. Appellant was able to fully flex and extend without complaints of pain. His gait pattern was normal and he had normal heel and toe raising bilaterally. In a sitting position, straight leg raise testing was positive bilaterally at 90 degrees. A flip test bilaterally aggravated appellant's back pain. Range of motion of both hips was full. A Faber's sign was negative bilaterally. In a supine position, straight leg raise testing was positive at 30 degrees bilaterally. A flip test produced back pain. Reflexes were brisk and symmetric and strength was normal in both lower extremities. There was no significant pretibial and pedal edema. Pulses were present. Sensation was intact to light touch bilaterally. Dr. Haskins diagnosed spinal stenosis unrelated to the work injury, lumbar disc displacement at L4-5 causally related to the work injury, and resolved shoulder sprain medically related to the work injury.

Dr. Haskins advised that appellant had reached maximum medical improvement regarding his back and right shoulder conditions and no longer required medical treatment for his back complaints. His shoulder sprain had long resolved. Dr. Haskins noted that appellant continued to complain of pain from his February 3, 2000 work injury based on an abnormal magnetic resonance imaging (MRI) scan and nerve conduction studies. He advised that appellant did not have residuals of his shoulder injury. Appellant had no nonindustrial or preexisting disability. Dr. Haskins opined that he was not totally disabled. Appellant was capable of returning to work with restrictions as of May 21, 2014. Dr. Haskins restricted lifting to no more than 20 pounds, and no bending and stooping. An attached May 21, 2014 work capacity evaluation (Form OWCP-5c) indicated that appellant was not capable of performing his usual job due to positive MRI scan and electromyogram (EMG) findings and complaints of pain, but he could work eight hours a day with permanent restrictions of no bending, stooping, or pushing and pulling more than 20 pounds, eight hours a day. Dr. Haskins recommended a 15-minute break every 2 hours.

By letter dated June 9, 2014, OWCP requested that the employing establishment offer appellant a position within the restrictions set forth by Dr. Haskins.

On June 17, 2014 the employing establishment offered appellant a full-time modified position as a sales service associate effective June 28, 2014 based on Dr. Haskins' restrictions. The position involved performing any variety of sales and customer services for six hours a day; handling and processing customer purchases and returns for four to six hours a day; and renting post office boxes and receiving rental payments for two hours a day. The physical requirements included standing six to seven hours a day; walking one to two hours a day; keying transactions

into a point of service (POS) system six to seven hours a day; and lifting less than 20 pounds four to six hours a day.

By letter dated July 1, 2014, OWCP advised appellant that it found the sales service associate position offered by the employing establishment to be suitable based on Dr. Haskins' opinion that he could work eight hours a day within restrictions. The employing establishment confirmed that the job remained available to appellant. OWCP instructed appellant that he must, within 30 days, either accept the position or provide a written explanation of why he did not accept the position or he could lose his right to compensation under 5 U.S.C. § 8106(c).

In a July 1, 2014 disability certificate, Dr. Ignacio advised that appellant was totally disabled from June 26 to July 31, 2014. He provided an impression of status post lumbar surgery with residual symptoms of pain and chronic progressive lumbar disc syndrome.

In reports dated July 9 and 18, 2014, Dr. Joshua Thomas, a Board-certified physiatrist, noted that appellant continued to have pain related to his 14-year-old work injury. Appellant reported persistent low back and radiating leg pain and tenderness over the bilateral sacroiliac joints, lower lumbar facet joints, and lower lumbar interspaces. Dr. Thomas provided a history of appellant's treatment, reviewed diagnostic test results, and set forth findings. He assessed sacroiliitis, lumbar spondylosis, mild lumbar spinal stenosis, lumbar disc displacement at L4-5, and postlumbar laminectomy syndrome. Dr. Thomas noted that appellant had not worked since 2000, and concluded that he was likely permanently disabled.

On August 8, 2014 the employing establishment informed OWCP that appellant had not reported for duty and the offered position remained available.

On August 13, 2014 OWCP received a July 29, 2014 prescription for a transcutaneous electrical nerve stimulation unit by Dr. Ignacio. In an August 8, 2014 report, Dr. Ignacio reiterated his impression of chronic progressive lumbar disc syndrome and diagnosed shoulder and upper arm strain/sprain.

By letter dated August 13, 2014, OWCP noted that appellant had not indicated if he would accept or report to the offered position. It further noted that the additional medical evidence submitted was insufficient to outweigh the weight accorded to Dr. Haskins' opinion. OWCP afforded appellant 15 days to accept the position or his wage-loss compensation benefits would be terminated. It noted that no further reasons for refusal would be considered.

In a July 9, 2014 report received by OWCP on August 25, 2014, Dr. Thomas reiterated his assessment of postlumbar laminectomy syndrome, lumbar disc displacement, mild lumbar spinal at L4-5, lumbar spondylosis, and sacroiliitis and opined that appellant was likely permanently disabled from work. In a referral/test order form dated July 9, 2014, he recommended a lumbar MRI scan. An August 7, 2014 lumbar MRI scan report from Dr. Philip S. Man, a Board-certified radiologist, revealed an impression of stable postoperative changes at L4-5 with enhancing epidural scar formation and disc material on both sides of the midline causing impingement on both descending L5 roots, greater on the left. Borderline spinal stenosis was stable. Overall, findings were relatively unchanged in comparison with plain films obtained in May 2013 and an MRI scan obtained in November 2012.

In reports dated July 1 and 28 and August 19 and 26, 2014, Dr. Ignacio noted appellant's history and set forth examination findings. He reiterated his impression of status post lumbar laminectomy with residual pain, chronic lumbar disc syndrome with lumbar radiculopathy, and chronic right shoulder strain and opined that appellant could not work. Dr. Ignacio diagnosed chronic lumbar strain syndrome, chronic right shoulder tendinitis with probable impingement syndrome, and chronic pain syndrome. He noted appellant's treatment and advised that the probability of his return to work was quite guarded. In the July 28, 2014 report, Dr. Ignacio attributed appellant's disability to his spinal injury which caused limited physical mobility. He also had limited ability to concentrate and a limited attention span due to his medications. Dr. Ignacio advised appellant to retire from the employing establishment. On July 28, 2014 he also treated appellant's neuropathic pains and injured nerves with Isokinetic Intramuscular Neural Enhancement therapy.

In an August 8, 2014 report, Dr. Thomas noted appellant's treatment and advised that his lumbar disc displacement at L4-5 had changed to lumbar disc displacement at L4-5 with enhancing epidural scar. He indicated that appellant's sacroiliitis, lumbar spondylosis, mild lumbar spinal stenosis at L4-5, lumbar disc displacement at L4-5, and postlumbar laminectomy syndrome were unchanged. Dr. Thomas again opined that appellant was likely permanently disabled. On August 8, 2014 he performed a fluoroscopically-guided therapeutic left and right sacroiliac joint block to treat appellant's back pain.

By decision dated September 30, 2014, OWCP terminated appellant's wage-loss compensation benefits and schedule award entitlement, effective that date, under 5 U.S.C. § 8106(c) as he had refused an offer of suitable work.

On October 20, 2014 appellant requested reconsideration.<sup>3</sup> In reports dated July 7 to November 4, 2014, Dr. Ignacio reiterated his prior assessments of appellant's lumbar, right shoulder, and pain conditions and opined that appellant could not work due to his physical limitations and multiple medications. He concluded that appellant was permanently and totally disabled and reiterated that his prognosis for returning to work was guarded. In reports dated August 19, October 7, and December 24, 2014, Dr. Ignacio disagreed with OWCP that the offered sales service associate position was suitable. He explained that appellant continued to have a painful condition that limited his physical capacity and required multiple medications and other proposed treatment. Dr. Ignacio also disagreed with Dr. Haskins' opinion that appellant no longer required additional treatment for his back complaint and was no longer totally disabled due to his accepted condition. He clearly continued to suffer from his February 3, 2000 work-related lumbar injury as confirmed by a recent MRI scan and an electrodiagnostic/EMG examination. Dr. Ignacio advised that lifting, bending, and stooping would aggravate appellant's medical condition. He also disagreed with OWCP's finding that his and Dr. Thomas' reports failed to provide an objective explanation to support their conclusion that appellant was unable to work and that he had ongoing disability. Dr. Ignacio maintained that his reports were complete and contained consistent physical findings throughout examination.

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<sup>3</sup> Initially, on October 9, 2014 appellant requested a review of the written record. On October 29, 2014 OWCP accepted his petition to withdraw his request for a review of the written record.

In an October 20, 2014 report, Dr. Thomas again reiterated his assessment of appellant's lumbar conditions and opined that appellant was likely permanently disabled for work. He assessed bilateral lumbar radiculopathy. OWCP also received a laboratory test report dated December 8, 2014 from AEGIS PAINCOMP.

In a January 20, 2015 decision, OWCP denied modification of the September 30, 2014 decision. It found that the medical evidence submitted was insufficient to outweigh Dr. Haskins' opinion that appellant could return to work with restrictions.

By letter dated June 28, 2015, appellant, through his representative, requested reconsideration of the January 20, 2015 decision. He cited Board precedent and contended that OWCP improperly terminated his compensation as the offered position was not suitable. Appellant asserted that the job offer did not meet Dr. Haskins' physical limitations as it did not state that no bending or stooping was required. He contended that it also did not explain the actual duties of the position. Progress notes from appellant's physical therapists were also submitted.

In a January 20, 2015 report, Dr. Ignacio advised that an EMG revealed normal nerve conduction along the right and left sural nerves, right peroneal and right and left tibial nerves, abnormal right and left peroneal nerve indicative of proximal conduction block at right and left L5 levels, and normal right and left tibial G-reflexes. There were abnormal EMG findings with evidence of chronic denervation along selected muscles of the right and left or bilateral lower limbs including, the legs, thighs, and right and left paraspinal muscles showing stable polyphasic motor units action potentials along the L4-5 distribution. In another January 20, 2015 report, Dr. Ignacio provided an impression of chronic musculoligamentous strain of the lumbar spine. In reports dated June 23 to July 21, 2015, he reiterated his assessment of appellant's lumbar, right shoulder, and pain conditions and opinion that appellant could not return to work.

In reports dated January 14 and April 14, 2015, Dr. Thomas reiterated his assessment of appellant's lumbar conditions and assessed improved sacroiliitis. On July 22, 2015 he reported improved bilateral lumbar radiculopathy.

In attending physician's reports (Form CA-20) dated June 1 to November 30, 2001, Dr. Jackson noted the February 3, 2000 date of injury and diagnosed lumbar disc syndrome and cervical sprain. He indicated with an affirmative check mark that the diagnosed conditions were employment related. Dr. Jackson found appellant totally disabled from November 2, 2001 to January 4, 2002. On June 29, 2001 he noted appellant's physical limitations. In a July 27, 2001 report, Dr. Jackson noted examination findings, indicated that appellant had not reached maximum medical improvement after his back surgery, and that appellant was not fit for work at that time. His August 31, 2001 report noted that appellant was eight months postsurgery and on schedule to return to modified light-duty work with a 10-pound lifting restriction. On October 5, 2001 Dr. Jackson reported that appellant had a fair amount of symptoms, but had improved since his surgery. He recommended vocational rehabilitation to return him to light-duty work.

A July 21, 2001 FCE performed by a physical therapist found that appellant could perform light work eight hours a day with no repetitive bending.

In a June 23, 2015 report, Dr. Jake Vrdoljak, a Board-certified radiologist, compared his lumbar MRI scan obtained on that day with an August 7, 2014 scan. He provided an impression of broad-based disc protrusion with central spinal canal stenosis at the L4-5 level anteroposterior thecal sac that was six millimeters in diameter and caused ventral compression of the thecal sac impinging on the L5 descending nerve roots bilaterally. Postsurgical changes were unremarkable and there was minimal progression of disease.

In a September 24, 2015 decision, OWCP denied modification of the January 20, 2015 decision.

### **LEGAL PRECEDENT**

Section 8106(c)(2) of FECA states that a partially disabled employee who refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by or secured for him is not entitled to compensation.<sup>4</sup> Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits under section 8106(c) for refusing to accept or neglecting to perform suitable work.<sup>5</sup> The implementing regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such a showing before entitlement to compensation is terminated.<sup>6</sup> The Board has recognized that section 8106(c) serves as a penalty provision as it may bar an employee's entitlement to future compensation and, for this reason, will be narrowly construed.<sup>7</sup>

To justify termination, OWCP must show that the work offered was suitable and that appellant was informed of the consequences of his or her refusal to accept such employment.<sup>8</sup> In determining what constitutes suitable work for a particular disabled employee, OWCP considers the employee's current physical limitations, whether the work was available within the employee's demonstrated commuting area and the employee's qualifications to perform such work.<sup>9</sup> OWCP procedures state that acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.<sup>10</sup>

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<sup>4</sup> 5 U.S.C. § 8106(c)(2).

<sup>5</sup> *Joyce M. Doll*, 53 ECAB 790 (2002); *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

<sup>6</sup> 20 C.F.R. § 10.517(a).

<sup>7</sup> *See Joan F. Burke*, 54 ECAB 406 (2003).

<sup>8</sup> *T.S.*, 59 ECAB 490 (2008); *Linda Hilton*, 52 ECAB 476 (2001); *Ronald M. Jones*, 52 ECAB 190 (2000); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon*, 43 ECAB 818 (1992).

<sup>9</sup> 20 C.F.R. § 10.500(b).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work, Job Offer Refusal*, Chapter 2.814.5a (June 2013); *see E.B.*, Docket No. 13-319 (issued May 14, 2013).

Section 10.516 of FECA's implementing regulations provide that OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.<sup>11</sup> After providing the 30-day and 15-day notices, OWCP will terminate the employee's entitlement to further wage-loss compensation and schedule award benefits.<sup>12</sup> However, the employee remains entitled to medical benefits.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained displacement of a lumbar intervertebral disc without myelopathy and a right shoulder and right upper arm sprain in an unspecified site as a result of the February 3, 2000 employment-related injury. He received appropriate total disability compensation benefits and medical expenses. In a September 30, 2014 decision, OWCP terminated his wage-loss compensation effective that day as he refused an offer of suitable work. The Board finds that OWCP properly terminated appellant's compensation.

The evidence of record establishes that appellant was capable of performing the sales service associate position offered by the employing establishment and determined to be suitable by OWCP on July 1, 2014. The position was a full-time position which involved performing any variety of sales and customer services for six hours a day; handling and processing customer purchases and returns for four to six hours a day; and renting post office boxes and receiving rental payments for two hours a day. The physical requirements included standing six to seven hours a day; walking one to two hours a day; keying transactions into a POS system six to seven hours a day; and lifting less than 20 pounds four to six hours a day. The record does not reveal that the sales service associate position was temporary in nature.<sup>14</sup> Moreover, there is no indication in the record that appellant, a former window clerk, could not vocationally perform the offered position.

The issue of whether an employee has the physical ability to perform a position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence.<sup>15</sup> The Board finds that the weight of the medical evidence in this case establishes that appellant was capable of performing the sales service associate position. In a May 20, 2014 opinion, Dr. Haskins, an OWCP referral physician, provided a comprehensive medical report in

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<sup>11</sup> 20 C.F.R. § 10.516.

<sup>12</sup> *Id.* at § 10.517(b).

<sup>13</sup> *Id.*

<sup>14</sup> If the employing establishment offers a claimant a temporary light-duty assignment and the claimant held a permanent job at the time of injury, the penalty language of section 8106(c) cannot be applied. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.4c(5), (9) (June 2013).

<sup>15</sup> *Robert Dickinson*, 46 ECAB 1002 (1995); *Marilyn D. Polk*, 44 ECAB 673, 680 (1993).



which he reviewed appellant's history of injury and medical treatment, presented examination findings, and found that he could return to full-time limited-duty work subject to physical limitations he specified. The employing establishment prepared a modified-duty job offer conforming with Dr. Haskins' physical restrictions, which OWCP reviewed and found suitable to appellant's physical limitations.

In his May 20, 2014 report, Dr. Haskins was provided with the appropriate medical records and a statement of accepted facts in order to have a sufficient history to render a well-reasoned opinion regarding the extent of disability following his examination. He found that while appellant had continued back complaints related to his accepted work injuries, his physical examination and objective evidence indicated that he had no residuals of the accepted right shoulder condition and was able to work with restrictions. Dr. Haskins reviewed the medical record and found no nonindustrial or preexisting disability that prevented appellant from returning to full-duty work. Dr. Haskins noted findings that included intact sensation and a functional range of motion of the shoulders, elbows, wrists, hands, hips, and lumbar spine. Dr. Haskins restricted appellant from lifting more than 20 pounds, bending, and stooping. For eight hours a day, he could not push or pull more than 20 pounds and he required a 15-minute break every two hours.

Dr. Haskins opined that appellant had reached maximum medical improvement regarding the accepted back and right shoulder conditions, detailed his specific findings and provided medical rationale to support his conclusion that appellant could return to work with limitations. Thus, the Board concludes that the weight of the medical opinion evidence rests with Dr. Haskins' opinion.

While Dr. Ignacio opined appellant had continuing employment-related residuals and total disability and needed further medical treatment, he failed to provide any medical rationale to support his opinion. He diagnosed status post lumbar laminectomy with residual pain, chronic progressive lumbar disc syndrome with lumbar radiculopathy, chronic lumbar arachnoiditis or lumbar spinal stenosis, chronic thoracolumbar strain, and chronic right shoulder strain/sprain, chronic right shoulder tendinitis with probable impingement syndrome, chronic pain syndrome, and chronic lumbar musculoligamentous strain. On July 28, 2014 Dr. Ignacio attributed appellant's inability to work to his limited physical mobility and limited concentration and attention span due to his medications. The Board notes that Dr. Ignacio did not provide sufficient medical rationale explaining how these conditions precluded appellant from accepting the offered position on or before September 30, 2014.

Dr. Thomas' reports assessed sacroiliitis, lumbar spondylosis, mild lumbar spinal stenosis, lumbar disc displacement at L4-5, post-lumbar laminectomy syndrome, and bilateral lumbar radiculopathy, and found that he was likely permanently disabled from work. Dr. Thomas did not present any objective findings to support his opinion on disability. Moreover, his opinion is speculative on appellant's capacity for work and is, therefore, of diminished probative value.<sup>16</sup> Dr. Thomas did not clearly state that he had reviewed the duties of the job offer made to appellant and that appellant was not capable of performing these duties.

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<sup>16</sup> *D.D.*, 57 ECAB 734, 739 (2006).

Appellant also provided reports from Dr. Jackson from 2001. However these reports substantially predate the June 17, 2014 job offer and are insufficient to outweigh Dr. Haskins' opinion. The Board has recognized the importance of medical evidence being contemporaneous with a job offer in order to ensure that a claimant is medically capable of returning to work.<sup>17</sup>

Dr. Vrdoljak's June 23, 2015 report addressed appellant's lumbar conditions, but failed to discuss the position offered on June 17, 2014 and appellant's ability to return to work. Likewise, other medical reports, including diagnostic reports, are of limited probative value as they do not address appellant's ability to perform the duties of the offered position.

The July 21, 2001 FCE and progress notes from appellant's physical therapists have no probative medical value, as physical therapists are not considered physicians as defined under FECA.<sup>18</sup>

The Board further finds that OWCP complied with its procedural requirements in advising appellant that the position was found suitable, providing him with the opportunity to accept the position or provide his reasons for refusing the job offer and notifying him of the penalty provision of section 8106(c).<sup>19</sup>

For these reasons, the Board finds that OWCP properly terminated appellant's compensation effective September 30, 2014 on the grounds that he refused an offer of suitable work.

Before OWCP and on appeal before the Board, appellant's representative contends that OWCP improperly terminated appellant's compensation. He contends that the offered position did not meet Dr. Haskins' physical restrictions of no bending or stooping and it did not explain the actual work duties. As discussed, the medical evidence established that appellant could perform the duties of a modified sales service associate and specifically noted in the June 17, 2014 job offer that he was to avoid bending and stooping. He offered no valid reason for refusing the offered position. There is also no evidence to support appellant's assertion that the offered position was not within Dr. Haskins' medical restrictions.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation on September 30, 2014 pursuant to 5 U.S.C. § 8106(c)(2).

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<sup>17</sup> See generally *Eileen R. Kates*, 46 ECAB 573 (1995).

<sup>18</sup> The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA).

<sup>19</sup> See *Bruce Sanborn*, 49 ECAB 176 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board